

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SCOTT EXCAVATING, INC. – ALLEGED)
VIOLATION OF UNDERGROUND FACILITY) CASE NO. 2019-00158
DAMAGE PREVENTION ACT)

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on August 9, 2019 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on August 9, 2019 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on August 9, 2019.

A copy of this Notice, the certification of the digital video record, hearing log, and exhibits have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/AU61HCfB9kc>.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 22nd day of August 2019.

A handwritten signature in black ink that reads "Gwen R. Pinson". The signature is written in a cursive style with a large initial 'G' and a long horizontal stroke at the end.

Gwen R. Pinson
Executive Director
Public Service Commission of Kentucky

Aaron Thomas
Scott Excavating, Inc.
3845 New Irvine Road
Waco, KENTUCKY 40385

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CERTIFICATION

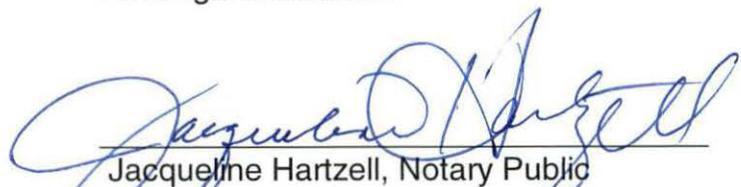
I, KaBrenda L. Warfield, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on August 09, 2019. Hearing Log, Exhibit List, Exhibit, and Witness List are included with the recording on August 09, 2019.
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of August 09, 2019.
4. The Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of August 09, 2019 and the time at which each occurred.

Signed this 21st day of August, 2019.


KaBrenda L. Warfield, CKP
Paralegal Consultant




Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Session Report - Detail

2019-00158 09AUG2019

Scott Excavating, Inc.

Date:	Type:	Location:	Department:
8/9/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Witness: John Lyons
 Judge: Michael Schmitt
 Clerk: KaBrenda Warfield

Event Time	Log Event	
11:07:29 AM	Session Started	
11:07:31 AM	Chairman Schmitt Note: Warfield, KaBrenda	We are now back on the record for Case No. 2019-00158, Scott Excavating, Inc., an alleged violation of the Underground Facilities Damage Prevention Act, that violation being an alleged violation of KRS 367.4911(1)(a), "Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement."
11:08:24 AM	Chairman Schmitt Note: Warfield, KaBrenda	Is that the allegation or charge against Scott Excavating, Inc., and is there any other allegation?
11:08:31 AM	Staff Atty Park PSC Note: Sacre, Candace	That is the correct allegation, and there is no other.
11:08:34 AM	Chairman Schmitt Note: Sacre, Candace	Okay. Thank you. Is there anyone in the hearing room present on behalf of Scott Excavating, Inc.?
11:08:44 AM	Chairman Schmitt Note: Sacre, Candace	This is the second time a docket call for Scott was made, the first being at approximately 9 o'clock a.m., and it appears as if Scott Excavating has determined not to appear.
11:09:00 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Park, are you ready to proceed with the Inspection Division's case against Scott Excavating?
11:09:08 AM	Staff Atty Park PSC Note: Sacre, Candace	Yes, Mr. Chairman.
11:09:09 AM	Chairman Schmitt Note: Sacre, Candace	All right. You may call your first witness.
11:09:11 AM	Staff Atty Park PSC Note: Sacre, Candace	Staff calls Mr. John Lyons.
11:09:21 AM	Chairman Schmitt - witness Lyons Note: Warfield, KaBrenda	Witness is sworn.
11:09:32 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	Direct Examination. Mr. Lyons, what is your position with the Public Service Commission?
11:09:43 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And what has been your role in developing and administering the Commission's program to enforce the Underground Facilities Damage Prevention Act?

11:10:16 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	Do you supervise Commission employees whose job it is to investigate incidents of excavation damage?
11:10:24 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And have you also, yourself, investigated incidents as an inspector?
11:10:33 AM	Staff Atty Park PSC Note: Sacre, Candace	May I approach, Your Honor?
11:10:34 AM	Chairman Schmitt Note: Sacre, Candace	Yes, you may.
11:11:00 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Mr. Lyons, if you would please describe this document.
11:11:12 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And what incident does this refer to?
11:11:33 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	And did you investigate this incident?
11:11:38 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Is this a true and accurate copy of your Pipeline Investigation Report for this incident?
11:11:45 AM	Staff Atty Park PSC Note: Sacre, Candace	Your Honor, staff moves to admit this document as PSC Exhibit 01.
11:11:49 AM	Chairman Schmitt Note: Sacre, Candace	Sustained. Let it be admitted.
11:11:52 AM	PSC EXHIBIT 01 Note: Sacre, Candace Note: Sacre, Candace	SCOTT EXCAVATING PIPELINE INVESTIGATION REPORT. STAFF ATTY PARK PSC - WITNESS LYONS.
11:11:53 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And, Mr. Lyons, could you please describe your investigation of this excavation damage incident?
11:14:23 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	Who is Mr. Thomas with respect to Scott Excavating?
11:14:37 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	Was a demand letter issued to Scott Excavating for this incident?
11:14:44 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And did Mr. Thomas indicate that Scott Excavating would accept the terms of the demand letter, or did he contest the finding and request a hearing?
11:16:00 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	To your knowledge, did Scott Excavating ever pay any portion of a proposed penalty?
11:16:08 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	And has a representative of Scott Excavating attended a training session?
11:16:16 AM	Staff Atty Park PSC - witness Lyons Note: Warfield, KaBrenda	When you talked to Mr. Thomas, did he deny the allegation that no dig ticket was obtained by Scott Excavating?
11:16:28 AM	Staff Atty Park PSC - witness Lyons Note: Sacre, Candace	I have no further questions.
11:16:43 AM	Chairman Schmitt - witness Lyons Note: Warfield, KaBrenda	Do you know if Scott Excavating, based on your conversation with either Mr. Thomas or - I suppose this is Lynn April Sylvia, the Office Manager. I have your letter here, I guess, a copy of the letter you sent.
11:16:59 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	Was it indicated to you that they had received the demand letter?

11:17:31 AM	Chairman Schmitt Note: Sacre, Candace	As I understand it Mr. Park, we discussed this earlier when we made the first docket call, there is evidence in the record that Scott Excavating has been served?
11:17:41 AM	Staff Atty Park PSC Note: Sacre, Candace	
11:17:44 AM	Chairman Schmitt Note: Sacre, Candace	That is correct, Your Honor.
11:17:46 AM	Staff Atty Park PSC Note: Sacre, Candace	
11:17:49 AM	Chairman Schmitt Note: Sacre, Candace	I have nothing further. Is there anything further you have, Mr. Park?
		Nothing further from staff.
11:18:03 AM	Session Ended	We will then adjourn this hearing and, in a minute or two, proceed with the next hearing. This matter is adjourned.



Exhibit List Report

2019-00158 09AUG2019

Scott Excavating, Inc.

Name:

Description:

PSC Exhibit 01

Pipeline Damage Investigation Report

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John Lyons	Incident ID 20857
Incident Date 8/14/2018 4:30:00 PM	Report Submitted 8/29/2018 10:34:11 AM

OPERATOR INFORMATION

Operator Delta Natural Gas Company, Inc. Phone 859-744-6171 ext. 1160 Incident Location 113 Mountain View Drive 113 Mountain View Dr Berea, KY 40403 Madison	Reported By Mary Virginia Rupard Email mvrupard@deltagas.com Locate Ticket Number
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EXCAVATOR INFORMATION

Name of Excavator Aaron Thomas Phone 859-623-4199 Excavator Address Scott Excavating, Inc 3845 New Irvine Road Richmond, KY 40475	Organization ID 0523861 Email Locate Ticket Number
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Operator reports that Aaron Thomas with Scott Excavating was using a mini-trackhoe to replace septic lines when he hit and broke a 3/4-inch plastic service line. Scott Excavating did not call 811 to request a line location prior to excavating.

Investigator Lyons called Scott Excavating on November 16, 2018. The receptionist took the information and said that someone would have to call back. Company is active and in good standing with Secretary of State.

Investigator Lyons recived a call from Scott Thomas, owner of Scott Excavating. He alleges that he did not call 811 because his company was working on junction boxes in an existing septic system and that other utilities are not supposed to be in a septic field. Mr. Thomas was asked to send a diagram of the gas service line in relationship to the existing septic field. Scottexcavating@bellsouth.net.

Investigator Lyons spoke with Mary Virginia Rupard on November 20, 2018. She is going to send a map of the service, indicating when it was installed and its' configuration to the home it serves.

Mr. Thomas provided the diagram as promised. Delta also provided the service map of the area. Both matched very well and it was evident that service came to the back of the house.

Mr. Thomas was contacted by phone on November 21, 2018, by Investigator Lyons who had determined that Mr. Thomas was in violation by not calling 811. First time offender options were explained to Mr. Thomas. Mr. Thomas relayed that he would think about the options and return call the following week.

Investigator Lyons left a follow-up message with Scott Excavating on December 5, 2018.

April from Scott Excavating left a message on December 6, 2018 and confirmed first time offender option was chosen.

Violations(s)

KRS 367.4911(1)(a) - Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

Aaron Thomas
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Waco, KENTUCKY 40385